

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

John D. West, on Behalf of Himself and) Case No. C-1-02-0001
All Other Persons Similarly Situated,)
Plaintiffs,) District Judge Sandra S. Beckwith
)
v.) Magistrate Judge Timothy S. Black
)
AK Steel Corp. Retirement Accumulation)
Pension Plan, et al.)
Defendants.) **NOTICE CORRECTING
DOC. NOS. 61 AND 62**

Plaintiffs timely filed their Motion for Partial Summary Judgment on the Issues of Damages and Prejudgment Interest (Doc. No. 60) on October 15, 2004. The motion was accompanied by an affidavit from plaintiffs' actuarial expert, Michael L. Libman, and several exhibits in which Mr. Libman tabulated his computations of class members' damages (Doc. No. 62). Plaintiffs' counsel learned yesterday that three of the exhibits contained a minor programming error, which error was carried over into the memorandum in support of plaintiffs' motion (Doc. No. 61). The undersigned informed defense counsel of the error yesterday, and now plaintiffs respectfully submit Corrected Exhibits 1, 4, and 5, with Mr. Libman's affidavit attesting to the corrections.

In the original Exhibits 4 and 5, Mr. Libman tabulated, for each class member, the amount by which the class member's lump sum distribution of pension benefits was underpaid, and then calculated prejudgment interest on the underpayment from the date of the class member's

original lump sum distribution. For that purpose, Libman calculated the interest using two different interest rates, one being the rate that would apply under the federal post-judgment interest statute, 28 U.S.C. § 1961, and the other being the minimum interest credit rate prescribed for Opening Accounts by § 3.3 of the AK Steel Plan. All of these calculations, both principal and interest, were correct.

However, for comparison purposes only, Mr. Libman also calculated the interest using the Ohio statutory rate,¹ and it was in this calculation that the error was made. Mr. Libman described the correct calculation – “10% per annum simple interest through June 1, 2004, and 4% per annum simple interest thereafter.”² However, the figures shown on the original Exhibits 4 and 5 inadvertently charged 4% interest on the previously earned 10% interest after June 1, 2004, overstating the totals associated with the Ohio rate by approximately six-tenths of one percent (0.006). The individual calculations reported in the original Exhibits 4 and 5 were then carried over into the classwide totals listed in the original Exhibit 1.

The mistake is rectified in Corrected Exhibits 1, 4 and 5, which are submitted herewith.³

1 Ohio Rev. Code Ann. § 1343.03.

2 Affidavit of Michael L. Libman, dated Oct. 12, 2004 (Doc. No. 62) at ¶ 8.

3 Corrected Exhibits 4 and 5 to Mr. Libman’s Affidavit will be filed under seal, pursuant to the Notation Order of Judge Sandra S. Beckwith that was entered in the above-captioned action on October 13, 2004, granting Plaintiffs’ Motion to File Exhibits 4 and 5 Under Seal (Doc. No. 59, filed Oct. 12, 2004), and further pursuant to S. D. Ohio Civ. R. 79.3. Plaintiffs’ undersigned Trial Counsel hereby certifies that he served via e-mail true and exact copies of said Corrected Exhibits 4 and 5 in proper PDF format on defendants’ counsel, Messrs. Wick and Yund, on the date of this Notice’s filing with the Court.

Respectfully submitted,

s/ Thomas R. Theado
Trial Attorney
Thomas R. Theado (0013937)
GARY, NAEGELE & THEADO LLC
446 Broadway Avenue
Lorain, Ohio 44052-1797
Ph: 440-244-4809
Fx: 440-244-3462

Of Counsel:

Robert D. Gary (0019610)
Jori Bloom Naegele (0019602)
Thomas A. Downie (0033119)
GARY, NAEGELE & THEADO LLC
446 Broadway Avenue
Lorain, Ohio 44052-1797
Ph: 440-244-4809
Fx: 440-244-3462

Allen C. Engerman
Law Offices of Allen C. Engerman, P.C.
666 Dundee Road—# 1200
Northbrook, Illinois 60062
Ph: 847-564-5555
Fx: 847-564-4944

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Thomas A Downie	tdownie@gntlaw.com
Allen C Engerman	acelaw@mcn.org
Stuart J Evans	sevans@cov.com
Robert D Gary	office@gntlaw.com
Jori Bloom Naegele	jnaegele@gntlaw.com
Thomas R Theado	ttheado@gntlaw.com
Robert D Wick	rwick@cov.com
George Edward Yund	gyund@fbtlaw.com

I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

Christopher M. Denig
Covington and Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, DC 20044

s/ Thomas R. Theado
Thomas R. Theado (0013937)
Attorney for Plaintiffs
Gary, Naegele & Theado LLC
446 Broadway Avenue
Lorain, Ohio 44052-1797
Telephone: (440) 244-4809
Telecopier: (440) 244-3462
E-mail: TomTheado@aol.com